

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

THE BOEING COMPANY

No. 4:21-CR-00005-O

**GOVERNMENT’S CLARIFICATION OF ARGUMENT FROM JANUARY 26, 2023,
HEARING REGARDING BURDEN OF PROOF UNDER 18 U.S.C. § 3142**

The United States of America, by and through undersigned counsel, hereby submits the following clarification regarding an argument made by the Government at the January 26, 2023 hearing regarding the burden of proof applicable to a finding of dangerousness under 18 U.S.C. § 3142 in the context of this case. During the hearing, the Government stated that the determination as to whether Boeing posed a danger to the community should be made under a “clear and convincing” standard consistent with 18 U.S.C. § 3142(f), while counsel for the crime victims’ representatives argued that the correct standard was preponderance of the evidence. Upon review of the relevant authorities, the Government agrees with the crime victims’ representatives that the applicable standard is preponderance of the evidence. *See United States v. Fortna*, 769 F.2d 243, 250 (5th Cir. 1985) (discussing the “the quantum or character of proof” applicable under § 3142(f) and reasoning that because “[n]o comparable provision is made respecting the reasonably assure appearance determination . . . the judicial officer making the latter determination should apply the simple preponderance standard”). Nevertheless, under either standard, for the reasons expressed at the January 26, 2023 hearing, the Government’s position on conditions of release remains unchanged.

Respectfully submitted,

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Certificate of Service

I certify that on January 31, 2023, I electronically filed this pleading with the clerk of the court for the U.S. District Court, Northern District of Texas, using the Court's electronic case filing system, which will send a notification of electronic filing to notify all counsel of record.

By: s/ Lorinda I. Laryea
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